

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA MAR 31 1997 9:28
EASTERN DIVISION

BROWN BROTHERS GRADING
COMPANY, INC.,

Plaintiff

vs.

WESTINGHOUSE REMEDIATION
SERVICES, INC., ET AL.,

Defendants

U.S. DISTRICT COURT
N.D. OF ALABAMA

CIVIL ACTION NO.

97-AR-0395-E

srn
ENTERED

MAR 31 1997

MEMORANDUM OPINION

The above-entitled case was removed by defendants based on diversity, claiming that there is no cause of action stated against any non-diverse defendant, although one or more non-diverse defendants are listed in the style of the case. While it may be possible for plaintiff to amend its complaint to state a cause of action against a non-diverse defendants, its complaint, for purposes of determining removability, must be examined as it existed at the time of the removal, and there is no cause of action stated, even remotely, against any non-diverse defendant as of the present. This means that the diversity removal was appropriate and the motion to remand due to be denied.

Defendants' motion for a stay pending arbitration properly triggers the preclusive effect of the Federal Arbitration Act to which the parties bound themselves by contract. Defendants'

motion is due to be granted, but in the manner in which this court handles mandatory arbitrability.

Appropriate orders will be entered.

DONE this 31st day of March, 1997.



WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT COURT